

UNITED STATES COURT OF APPEALS
TENTH CIRCUIT

AUG 25 2000

PATRICK FISHER
Clerk

PHILIP DON WILLOUGHBY,

Petitioner - Appellant,
vs.

TWYLA SNIDER,

Respondent - Appellee.

No. 99-6446
(D.C. No. 97-CV-1887-C)
(W.D. Okla.)

ORDER AND JUDGMENT*

Before **BRORBY, KELLY, and MURPHY**, Circuit Judges.**

Mr. Willoughby, an inmate appearing pro se, seeks to appeal from the district court's denial of his motions for relief from judgment and for leave to file a notice of appeal out of time, so that he may appeal the denial of his habeas petition, 28 U.S.C. § 2254. The district court, adopting the magistrate's recommendation, denied Mr. Willoughby's habeas petition in an order entered

* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. This court generally disfavors the citation of orders and judgments; nevertheless, an order and judgment may be cited under the terms and conditions of 10th Cir. R. 36.3.

** After examining the briefs and the appellate record, this three-judge panel has determined unanimously that oral argument would not be of material assistance in the determination of this appeal. See Fed. R. App. P. 34(a); 10th Cir. R. 34.1 (G). The cause is therefore ordered submitted without oral argument.

February 24, 1999. In October 1999, Mr. Willoughby filed his motions, asserting that his counsel on the habeas matter told him that an appeal was automatic.

The district court did not abuse its discretion in denying relief on the post-judgment requests. Because Mr. Willoughby failed to file his motions for relief within the 180 day time period specified by Fed. R. App. P. 4(a)(6), he is time-barred from doing so now. Mr. Willoughby is unable to circumvent this requirement under the auspices of Rule 60(b). See Servants of the Paraclete v. Does, I-XVI, 204 F.3d 1005, 1009-1010 (10th Cir. 2000).

We DENY a certificate of appealability and DISMISS the appeal.

Entered for the Court

Paul J. Kelly, Jr.
Circuit Judge